IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Bail Appl..No. 6041 of 2007(M)

CRIME NO. 14 OF 2006 OF PULIKEEZHU POLICE STATION
CP.39/2007 of J.M.F.C.,THIRUVALLA

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PETITIONER/ACCUSED

MANIKUTTAN, AGED 32 YEARS, S/O.RAGHAVAN,
OTHANTEKUNNIL, PANDANAD WEST MURI,
PANDANAD VILLAGE, CHENGANNUR TALUK.

BY ADV. SRI.K.JAISHANKAR

RESPONDENTS: COMPLAINANTS

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
PULIKEEZHU POLICE STATION.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6041 of 2007

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Dated this the 4th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found engaged himself in the illicit sale of liquor on 25.1.2006. 8 litres of arrack was allegedly seized also. The petitioner was not available for arrest. Investigation is now complete. Final report has already been filed. The petitioner apprehends imminent arrest. He prays that directions under Section 438 Cr.P.C. may be issued in his favour.

2. The learned Prosecutor opposes the application. He submits that cognizance having been already taken, the petitioner may be directed to appear before the Investigator or the learned Magistrate and then seek regular bail in the normal course.

3. I find merit in the opposition by the learned Prosecutor. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the

pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on

merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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